

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 95-88888-cgm

4 - - - - - x

5 In the Matter of:

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7 THE BANKRUPTCY LINK,

8 Debtors.

9 - - - - - x

10 Case No. 09-11893-cgm

11 - - - - - x

12 In the Matter of:

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14 BERNARD L. MADOFF,

15 Debtor.

16 - - - - - x

17 Adv. Case No. 08-01789-cgm

18 - - - - - x

19 SECURITIES INVESTOR PROTECTION CORPORATION,

20 Plaintiff,

21 v.

22 BERNARD L. MADOFF INVESTMENT SECURITIES, LLC. et al.,

23 Defendants.

24 - - - - - x

25

1 Adv. Case No. 10-04889-cgm

2 - - - - - x

3 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

4 MADOFF INVESTMENT SECURITIES LLC,

5 Plaintiff,

6 v.

7 THE ESTATE OF ROBERT SHERVYN SAVIN et al.,

8 Defendants.

9 - - - - - x

10 Adv. Case No. 10-04921-cgm

11 - - - - - x

12 IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

13 MADOFF INVESTMENT SECURITIES LLC,

14 Plaintiff,

15 v.

16 MILLER,

17 Defendants.

18 - - - - - x

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Adv. Case No. 10-04486-cgm

- - - - - x

IRVING H. PICARD, TRUSTEE FOR THE LIQUIDATION OF BERNARD L.

MADOFF INVESTMENT SECURITIES LLC,

Plaintiff,

v.

THE NORMA SHAPIRO REVOCABLE DECLARATION OF TRUST UNDER

AGREEMENT,

Defendant.

- - - - - x

United States Bankruptcy Court

355 Main Street

Poughkeepsie, NY 12601

March 17, 2021

10:00 AM

B E F O R E :

HON CECELIA G. MORRIS

U.S. BANKRUPTCY JUDGE

ECRO: UNKNOWN

1 HEARING re Adversary proceeding: 08-01789-cgm
2 Securities Investor Protection Corporation v. Bernard L.
3 Madoff Investment Securities, LLC. et al
4 Doc# 20318 Notice of Hearing for Status Conference filed by
5 Clerk of Court, United States Bankruptcy Court, SDNY. with
6 hearing to be held on 3/17/2021 at 10:00 AM at
7 Teleconference Line (CourtSolutions)(CGM)
8
9 HEARING re Adversary proceeding: 10-04889-cgm
10 Irving H. Picard, Trustee for the Liquidation of B v. The
11 Estate of Robert Shervyn Savin et al
12 Doc# 109 Notice of Hearing to consider the Transcript
13 regarding Hearing Held on 1/20/21 at 10:00 AM RE: Status
14 Conference re Mediations. Remote electronic access to the
15 transcript is restricted until 4/22/2021. The transcript may
16 be viewed at the Bankruptcy Court Clerks Office.
17 [Transcription Service Agency: Veritext Legal Solutions.].
18 (See the Courts Website for contact information for the
19 Transcription Service Agency.). Notice of Intent to Request
20 Redaction Deadline Due By 1/29/2021. Statement of Redaction
21 Request Due By 2/12/2021. Redacted Transcript Submission Due
22 By 2/22/2021. Transcript access will be restricted through
23 4/22/2021 (related document(s) 106) filed by Clerk of Court,
24 United States Bankruptcy Court, SDNY. with hearing to be
25 held on 3/17/2021 (check with court for location)

1 HEARING re Adversary proceeding: 10-04889-cgm
2 Irving H. Picard, Trustee for the Liquidation of B v. The
3 Estate of Robert Shervyn Savin et al
4 Doc. #106 Transcript regarding Hearing Held on 1/20/21 at
5 10:00 AMRE: Status Conference re Mediations.
6 Remote electronic access to the transcript is restricted
7 until 4/22/2021.
8 The transcript may be viewed at the Bankruptcy Court Clerks
9 Office. [Transcription Service Agency: Veritext Legal
10 Solutions.]. (See the Courts Website for contact information
11 for the Transcription Service Agency.). Notice of Intent to
12 Request Redaction Deadline Due By 1/29/2021. Statement of
13 Redaction Request Due By 2/12/2021. Redacted Transcript
14 Submission Due By 2/22/2021. Transcript access will be
15 restricted through 4/22/2021. (Cales, Humberto)
16
17 HEARING re Adversary proceeding: 10-04921-cgm
18 Irving H. Picard, Trustee for the Liquidation of B v. Miller
19 Doc# 90 Notice of Hearing to consider the Letter to Hon.
20 Stuart M. Bernstein to request a pre-motion conference
21 pursuant to Rule 7056-1(a) Filed by Nicholas Cremona on
22 behalf of Irving H. Picard, Trustee for the Liquidation of
23 Bernard L. Madoff Investment Securities LLC, and Bernard L.
24 Madoff and Letter to the Honorable Stuart M. Bernstein In
25 Response and Opposition to Trustees Request for a Pre-motion

1 Conference Filed by Carole Neville on behalf of Stanley T.
2 Miller(related document(s)85, 87) filed by Clerk of Court,
3 United States Bankruptcy Court, SDNY. with hearing to be
4 held on 3/17/2021 at 10:00AM at Teleconference Line
5 (CourtSolutions) (CGM)
6
7 HEARING re 09-11893-cgm Bernard L. Madoff
8 Doc# 40 Notice of Hearing for Status Conference filed by
9 Clerk of Court, United States Bankruptcy Court, SDNY. with
10 hearing to be held on 3/17/2021 at 10:00 AM at
11 Teleconference Line (CourtSolutions)(CGM)
12
13 HEARING re Adversary proceeding: 10-04486-cgm
14 Irving H. Picard, Trustee for the Liquidation of B v. The
15 Norma Shapiro Revocable Declaration of Trust U
16 Doc# 108 Notice of Hearing to consider the Letter to Hon.
17 Stuart M. Bernstein to request a pre-motion conference
18 pursuant to Rule 7056-1(a)Filed by Nicholas Cremona on
19 behalf of Irving H. Picard, Trustee for the Liquidation of
20 Bernard L. Madoff Investment Securities LLC, and Bernard L.
21 Madoff and Letter to the Honorable Stuart M. Bernstein In
22 Response and Opposition to Trustees Request for a Pre-motion
23 Conference Filed by Carole Neville on behalf of Norma
24 Shapiro, The Norma Shapiro Revocable Declaration of Trust
25 Under Agreement Dated9/16/08, Trust Under Will of Philip L.

1 Shapiro (related document(s)103,105) filed by Clerk of the
2 United States Bankruptcy Court, SDNY. With hearing to be
3 held on 3/17/2021 at 10:00 AM at Teleconference
4 Line(CourtSolutions) (CGM)

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25 Transcribed by: Sonya Ledanski Hyde

1 A P P E A R A N C E S :

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7 ALSO PRESENT TELEPHONICALLY:

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9 MICHAEL DRISCOLL

10 ROSA EVERGREEN

11 PATRICK MOHAN

12 JAMES BURKE

13 LAURA TAVERAS

14 VISHAKHA JOSHI

15 RANDELL MARTIN

16 DAVID PARHAM

17 MERILEN DAL RI ZIVIANI

18 ZEB LANDSMAN

19 DAVID SHEEHAN

20 JEFFREY TUCKER

21 MARK MCKEEFRY

22 LEO MUCHNIK

23 SARAH EICHENBERGER

24 JOCELYN GREER

25 ANDREW HARRIS

1 THOMAS KESSLER
2 ADAM LAVINE
3 KEVIN KELLY
4 KENNETH KRYN
5 BIANCA LIN
6 ROBERT LACK
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1 P R O C E E D I N G S

2 THE COURT: Call the calendar just by the numbers
3 because, as you know, we have sort of odd linking numbers.
4 Let's just begin by everyone on the phone introducing
5 themselves.

6 MR. CREMONA: Good morning, Your Honor. Nicholas
7 Cremona of Baker & Hostetler appearing on behalf of Irving
8 Picard as SIPA Trustee.

9 MS. CHAITMAN: Good morning, Your Honor. This is
10 Helen Davis Chaitman of Chaitman LLC on behalf of a number
11 of clawback defendants.

12 MS. NEVILLE: Good morning, Your Honor. Carole
13 Neville from Dentons on behalf of Stanley Miller and Norma
14 Shapiro, and with me is Art Ruegger from Dentons.

15 MR. KRATENSTEIN: Good morning, Your Honor.
16 Andrew Kratenstein of McDermott Will & Emery on behalf of
17 the Sage defendants: Sage Associates, Sage Realty, and three
18 members of the Sage family.

19 THE COURT: Mr. Molton, you have your hand up.

20 MR. MOLTON: Oh, sorry, Judge. David Molton.
21 I'll let Mr. Elsberg speak as well. David Molton of Brown
22 Rudnick for the Liquidators of the Fairfield Funds,
23 Fairfield Sentry, Sigma and Lambda. Mr. Elsberg.

24 MR. ELSBERG: Hi. Yes, Your Honor, this is David
25 Elsberg from Selendy & Gay for the Fairfield Joint

1 Liquidators. Mr. Ken Krys, who's one of the two Joint
2 Liquidators I represent is also on the phone with me. And
3 also on the phone with me are my colleagues, Lena Konanova
4 and Ron Krock from Selendy & Gay.

5 THE COURT: Very good. Anyone else wish to put
6 their name on the record. Yes?

7 MR. BAMBERGER: Good morning, Your Honor. This is
8 Noel Bamberger at Cleary Gottlieb, representing the HSBC
9 defendants, and with me on the phone are Christine Jordan
10 and David Schwartz also from Cleary Gottlieb.

11 MR. KRZYZOWSKI: Marek Krzyzowski, Brown Rudnick,
12 also for the Liquidators, Fairfield Sentry, Sigma and
13 Lambda.

14 THE COURT: Excuse me, sir. I didn't get the name
15 of the last person that spoke.

16 MR. KRZYZOWSKI: Apologies, Your Honor. This is
17 Marek Krzyzowski with Brown Rudnick, along with David Molton
18 for the Liquidators of Fairfield Sentry, Sigma and Lambda.

19 THE COURT: Okay.

20 MS. BROWN: Good morning, Your Honor. This is
21 Seanna Brown on behalf of Irving Picard, Trustee, of Baker
22 Hostetler.

23 MR. KING: Good morning, Your Honor. It's
24 Marshall King from Gibson Dunn & Cruther, on behalf of the
25 UBS parties.

1 MR. CALVANI: Good morning, Your Honor. Torello
2 Calvani of Baker Hostetler on behalf of the Trustee, Irving
3 Picard.

4 MR. GOTTRIDGE: Good morning, Your Honor. It's
5 Marc Gottridge of Hogan Lovells US, LLP, on behalf of the
6 Barclays defendants.

7 MR. WARSHAVSKY: Good morning, Your Honor. This
8 is Oren Warshavsky of Baker Hostetler, also for the Trustee.

9 MR. SIMON: Good morning, Your Honor. This is
10 Howard Simon from Windels Marx as special counsel to the
11 Trustee.

12 MS. LONGO: Good morning, Your Honor. This is Kim
13 Longo, also of Windels Marx, as special counsel to the
14 Trustee.

15 MR. STRONG: Good morning, Your Honor. This is
16 Fletcher Strong of Wollmuth Maher & Deutsch on behalf of
17 Fairfield Investment Fund, Ltd., FIF Advanced Ltd., and
18 Fairfield Investment GCI.

19 MR. DUDA: Good morning, Your Honor. Justin Duda
20 of Young Conaway Stargatt & Taylor on behalf of Irving
21 Picard as Trustee.

22 MR. BOCCUZZI: Good morning, Your Honor. Carmine
23 Boccuzzi from Cleary Gottlieb on behalf of the Citibank
24 defendants, and I'm here with my colleague, Pascale Bibi.

25 MR. NEIBURG: Good morning, Your Honor. Michael

1 Neiburg from Young Conaway on behalf of the Trustee.

2 MR. FINN: Good morning, Your Honor. Andrew Finn
3 from Sullivan & Cromwell on behalf of the Standard Chartered
4 and Bank Safra Sarasin defendants.

5 MR. HALLENBECK: Good morning, Your Honor.
6 Nicholas Hallenbeck on behalf of SIPC.

7 THE COURT: Thank you. Does anyone else wish to
8 put their name on the record? Since there's so many of us,
9 please any time you wish to speak, make sure you give your
10 name before you speak so that the record is clear of who is
11 speaking. Thank you.

12 Good morning. A lot has to do today with
13 basically just a status on many things. I do know I have
14 things that I do have to rule on, but basically, it's a
15 status. Let me first say there's a bit of a procedure
16 change for everyone. I do not appreciate or want papers or
17 even agendas the day before or at 9:00 the day before I'm
18 going on the bench at 10:00 the next morning. Please file
19 everything by Friday. We're going to have a continual
20 Wednesday hearing. Make sure I have the information, so I
21 have time to digest what has been filed for me to even look
22 at during a status conference.

23 First, let's begin with -- I know we have an
24 agenda. The only agenda that's been presented to me though
25 is from the SIPA liquidation in 08-01789, and these are --

1 the first thing is the status of the cases. And let me just
2 begin, this is a status hearing. I do need an update to the
3 Court as to whether this litigation stands, what causes
4 remain. And I've seen your paperwork and I've seen Exhibit
5 A, B and C, and the timeline for moving forward. I want you
6 to tell me what procedures we have and what's working.

7 I can tell you right now, I'm not changing those
8 procedures at this time, but I reserve the ability to
9 revisit them if I see things are not moving forward. So you
10 can tell me things that you think are working, things that
11 you think aren't working and what we need to do about it.

12 I do have the Exhibits A, B and C. I do have one
13 quick question before we go to A. On B, I think there's a
14 little bit of difference. And since I'm trying to follow
15 these precisely and this will be basically, my beginning of
16 knowing truly about all cases, in the written materials, you
17 said you had one bad faith case and 10 feeder fund. On
18 Exhibit B, I have 10 total, not one and nine, you had one
19 and 10.

20 Would some from Baker Hostetler first like to
21 bring me up to date and give me a status on the open
22 adversaries: where are they, how many are actively
23 litigated, and from the exhibits, the breakdown of these
24 cases. Who is going to be speaking for Baker Hostetler?

25 MR. CREMONA: Good morning, Your Honor, again.

1 This is Nicholas Cremona for the record appearing on behalf
2 of Irving Picard.

3 I was going to, along with my colleagues, Seanna
4 Brown, Oren Warshavsky, and Torello Calvani will walk you
5 through the report as you requested, if that's acceptable to
6 Your Honor, and to answer any questions you may have along
7 the way.

8 Just to answer your initial question with regard
9 to the exhibits and the number, there was an inadvertent
10 error there, and we can walk you through the number of
11 cases. The bad faith and feeder fund cases is correctly
12 stated on the exhibit as 11, but there is an error in the
13 paragraph, which we will happily correct.

14 But if it's acceptable --

15 THE COURT: Okay, wait. I have it as 10 and
16 you're saying at 11. If you look at the bad faith feeder
17 cases on your Exhibit B, there are only 10 cases all
18 together. Did you have another case that you needed to add?

19 MR. CREMONA: No, Your Honor, that is correct. I
20 believe it was elsewhere stated incorrect within the status
21 to the Court itself.

22 THE COURT: Thank you. That's all I needed to
23 know because, again, I will tell you right now more than
24 likely, I'll refer back to these at times because I'm
25 expecting that this is a complete list of what we're dealing

1 with, I mean in the future. Okay.

2 MR. CREMONA: It is, Your Honor. And, you know,
3 as you saw, the status report was filed yesterday, and we
4 will certainly be mindful of filing everything the Friday in
5 advance and we apologize for that inconvenience.

6 But the report is designed to give Your Honor an
7 overview of the status of the liquidation as a whole,
8 recovery efforts, the administration of the case generally,
9 and the ongoing litigation matters, as you have seen.

10 It's designed to advise Your Honor, as you
11 mentioned, of the procedural posture of the remaining
12 avoidance actions and what the Trustee believes will be
13 coming before the Court in the coming months.

14 So with that background, I would just briefly go
15 through some of the initial sections, as I said, with my
16 colleagues to give you an overview generally of the
17 liquidation in the first instance. And as you may have
18 seen, we started out with an overview of the Trustee's
19 recovery and distribution efforts.

20 As of the end of February, the Trustee has
21 recovered approximately \$14.413 billion since the inception
22 of the liquidation proceeding. And to date, the Trustee has
23 made 12 interim distributions to customers, aggregating more
24 than \$14.16 billion, and the customers have received almost
25 70 percent of their allowed claims.

1 The Trustee is continuing to build on these
2 extraordinary efforts to prosecuting the remaining
3 identified actions in the status report and specifically,
4 the Trustee's recoveries have been comprised of the proceeds
5 of over 1100 avoidance actions commenced in the four
6 categories that we laid out in the report, namely the good-
7 faith cases, the bad faith cases, the feeder fund cases, and
8 the subsequent transferee cases.

9 My colleagues and I plan to provide an update on
10 each category, their procedural posture and how we expect
11 them to proceed before the Court in the coming months, as
12 you have requested.

13 The first section of the report on the case
14 administration and procedure is really designed to address
15 Your Honor's initial point of what we've been doing, how we
16 see the matters working, what we think works, and hopefully
17 to confirm that Your Honor agrees that these general
18 practices work and will continue to use them going forward.

19 Generally, as you may have seen, we identified the
20 overall overarching procedural orders, namely: the claims
21 procedures order, which establishes procedures whereby the
22 Trustee has been resolving pending objections to the
23 Trustee's claims determination, and we continue to do that
24 on an ongoing basis; the litigation procedures order, which
25 establishes the procedures governing the remaining good-

1 faith actions, which we will discuss; the settlement
2 procedures order, which has worked quite well, permits the
3 Trustee to settle avoidance actions with defendants where
4 the face amount of the Complaint was less than \$20 million
5 without further burdening the Court with the filing of a
6 9019 motion or further Court approval.

7 We also have pointed in the case a discovery
8 arbitrator to relieve the burden on the Court in dealing
9 with discovery disputes that the parties agree to submit to
10 former Magistrate Judge Frank Maas, with JAMS, and we have
11 detailed in the report how Judge Maas has been instrumental
12 in streamlining and resolving several key discovery
13 disputes.

14 We also briefly outline the process whereby the
15 Trustee generally on a now-annual basis files motions for
16 the allocation of customer property and interim
17 distributions to customers. And as Your Honor may have
18 noted, most recently, the Trustee's completed the 12th
19 interim distribution from the fund, the customer fund,
20 distributing more than \$231 million to eligible customers.

21 And that's a brief summary of the procedural
22 matters and how we've been moving forward. And subject to
23 Your Honor's continued approval, you know, we certainly
24 think the process has been working and moving the cases
25 forward, and we can discuss each way that we're doing that,

1 starting next with the claims litigation.

2 We wanted to provide you with an update there on
3 the status generally and what's going on before the Court.
4 Since the filing date, the Trustee has resolved over 4,236
5 objections to the Trustee's claims determination. We've
6 made significant progress. As of today, only 229 objections
7 remain. As I mentioned, pursuant to the claims procedure
8 order, the Trustee continues to resolve pending objections
9 by way of omnibus motions.

10 Your Honor may recall seeing the Trustee's most
11 recent motion, which is the 37th omnibus motion, returnable
12 before the Court on April 21st, and that motion seeks to
13 resolve an additional eight pending objections. We have
14 been filing omnibus motions on a monthly basis as issues in
15 the case are resolved and pave the way for determining those
16 pending objections. And again, provided that it's
17 acceptable to Your Honor, we'll continue with that practice
18 to resolve the remaining objections.

19 THE COURT: Okay.

20 MR. CREMONA: Next, Your Honor, we wanted to
21 provide an update on the status of the four categories of
22 avoidance action that I mentioned earlier, starting with the
23 good-faith actions, which are those cases where the Trustee
24 acknowledges that defendants received the transfers from
25 BLMIS in good faith within the meaning of Bankruptcy Code

1 Section 548(c), and Your Honor has some familiarity already
2 with those actions having conducted a trial in the main
3 proceeding and recently deciding the Epstein matter by way
4 of summary judgment.

5 To date, Your Honor, the Trustee has successfully
6 resolved over 935 good-faith actions, resulting in over \$1.3
7 billion in recovery for the customer fund. As of today as
8 Your Honor saw on Exhibit A to the report, there are 64
9 active good-faith cases remaining, including nine cases
10 where the parties have reached settlements in principal that
11 we expect to resolve and dismiss over the next few months.

12 With regard to where we are on the remaining 64
13 cases, we've completed discovery in 59 of them and engaged
14 in early mediation in five related cases which are ongoing.
15 We expect to resolve the remaining good-faith cases by way
16 of, for the most part, mediation pursuant to the litigation
17 procedures order to the extent that the parties agree
18 mediation would be productive, or we intend to seek leave to
19 file summary judgment motions as we have in two cases that
20 are on the calendar later today.

21 It is the Trustee's position that all the
22 remaining good-faith actions are substantially the same and
23 amenable to disposition as a matter of law pursuant to the
24 Court's recent decision that I mentioned in the Epstein
25 case, which is at Adversary Proceeding No. 10-4438, ECF No.

1 155, which Your Honor decided on January 27, 2021.

2 The Trustee expects to resolve these cases in this
3 manner before the Court over the next several months. And
4 to the extent the cases are not resolved through mediation
5 or dispositive motion, the Trustee then would proceed to
6 trial before the Court pursuant to the litigation procedures
7 order as required in Paragraph 7.

8 THE COURT: Let me interrupt you and ask one
9 question. On the active good-faith cases on Exhibit A, you
10 have RAR Entrepreneurial Fund Ltd. Is that not with
11 District Court Judge Furman?

12 MR. CREMONA: Yes, Your Honor. There are 11
13 matters that are pending in the District Court, and we have
14 listed them in the report as Your Honor has noted. Seven of
15 those matters are on motions to withdraw the reference; in
16 four of the matters, the reference has been withdrawn.

17 And in one of those cases as Your Honor noted, is
18 the RAR decision and Judge Furman has recently issued a
19 decision granting in part the Trustee's motion for summary
20 judgment, and that matter is actually scheduled for a
21 conference before Judge Furman tomorrow afternoon. And we
22 can discuss this in the status conference later on the
23 pending mediations, but I intend to report to Your Honor
24 that we intend to mediate that case on a parallel track as
25 it proceeds before Judge Furman, again, to the extent that's

1 acceptable to the Court.

2 THE COURT: That's absolutely acceptable. If you
3 would do me a favor on your next report, not necessarily
4 this one, is just put a little asterisk for the things that
5 we're waiting on District Court or they're at District
6 Court, so that I honestly don't clutter my brain. How's
7 that?

8 MR. CREMONA: Absolutely, Your Honor. There is a
9 paragraph dedicated to the matters pending in the District
10 Court, and I apologize. I know you didn't have sufficient
11 time to review the report in detail, but we did itemize
12 those 11 matters for Your Honor's convenience as stated in
13 the report.

14 THE COURT: I did, and I did read it. The problem
15 is absorbing it enough to then look at Exhibit A and put
16 them together. I mean, the RAR one was easy, and it stood
17 out because, of course, I have read that decision, so that
18 was all. I'm just trying to make them go together so that I
19 can understand the full picture of everything. Thank you.

20 MR. CREMONA: Understood, thank you, Your Honor.
21 And unless Your Honor has any other questions regarding the
22 good-faith cases or the other matters I've addressed, I will
23 cede the virtual podium, if you will, to my colleague Seanna
24 Brown to address the status of the appeal of the good-faith
25 standard under 548(c) and 550(b) and how it affects the

1 remaining bad faith, feeder fund, and subsequent transferee
2 cases.

3 THE COURT: Thank you. I appreciate that. Thank
4 you.

5 MR. CREMONA: Thank you, Your Honor. Miss Brown.

6 MS. BROWN: Yes, good morning, Your Honor. Seanna
7 Brown on behalf of Irving Picard.

8 As Mr. Cremona just said, I'd like to discuss the
9 appeals on the good-faith standard. Last Friday was a very
10 big day in the case that we've, the Trustee, and probably
11 all of the parties have been waiting for for almost seven
12 years, which is to have the Circuit review the standard that
13 Judge Rakoff imposed back in 2014 on good faith and whose
14 burden it is to plead.

15 So I'd like to discuss that appeal today and give
16 you some background on that. But before I do, I thought it
17 might be helpful for me to run through the categories of
18 cases that could be implicated by the Second Circuit's
19 ruling.

20 THE COURT: Okay.

21 MS. BROWN: So we three subgroups of cases where
22 we allege that the defendants took the transfers without --
23 with a lack of good faith. We have what we call the bad-
24 faith cases; those were cases that were brought in 2010. We
25 brought about 30 of them against Madoff's friends, family

1 members, employees and other insiders. We've resolved or
2 settled all of those cases with the exception of Picard v.
3 Avellino; that case is in active discovery.

4 We brought about 30 actions against Madoff's
5 feeder funds; those are cases like the Fairfield case, which
6 I know Your Honor is familiar with. Those are Madoff
7 customers that aggregated the investments of other
8 investors. We brought 30 of those actions back in 2010.
9 We've resolved or settled 21 of them and there are nine
10 still pending, which is indicated on the Exhibit B to the
11 report.

12 And we can fix, if Your Honor would find that
13 helpful, Paragraph 20 of the report, which has the
14 discrepancy that you noted at the beginning of the hearing.

15 THE COURT: Just so long as it's noted on the
16 record; that's all I need because I'm probably going to
17 refer myself back to Exhibit A, B and C throughout this
18 case.

19 MS. BROWN: Okay. So Exhibit B has the one bad
20 faith and the nine feeder fund cases that are still pending,
21 so that we have a total of 10 cases in that category.

22 And I just want to pause to note that the Trustee
23 has had enormous success in these cases. We've recovered
24 over \$11.6 billion from defendants in these cases, and that
25 has allowed the Trustee to make significant distributions of

1 customer property to Madoff customers in this proceeding.

2 Our last category of bad-faith cases are the
3 subsequent transfer cases.

4 THE COURT: Slow down for just a moment. The ones
5 that are in front of me though of this 11, these are
6 Avellino and then the feeder fund cases. These are the ones
7 that are still outstanding.

8 MS. BROWN: Correct, Your Honor.

9 THE COURT: Okay, that's all I needed to know. I
10 just wanted to be clear about that because you jumped to the
11 recovery, but the recovery is not from any one of these
12 cases; these are what's still left. Thanks.

13 MS. BROWN: Sure. And just not to correct the
14 record, so we have 10 cases in the bad faith and feeder fund
15 categories. Your Honor, I just said 11. I just want to
16 make sure the record is clear, so it doesn't get confusing.
17 We have 10, as indicated on Exhibit B.

18 THE COURT: Thank you.

19 MS. BROWN: You're welcome. So our last category
20 of cases in the bad-faith world is the subsequent transfer
21 cases, and those are defendant cases where defendants
22 received transfers of property from Madoff feeder funds, and
23 we have 83 of those cases pending, currently pending before
24 Your Honor.

25 So all of these cases, because --

1 THE COURT: Excuse me, let me interrupt again. In
2 every one of these, no reference has been withdrawn, there
3 is no other court involved in these 83. I have 83.

4 MS. BROWN: There's 83, 83 is the correct number.
5 That is correct, with the exception of three cases: the
6 first would be Citibank, that's one case that's subject to
7 the Second Circuit's appeal.

8 THE COURT: Certainly.

9 MS. BROWN: And there are two cases that are
10 pending before the District Court; they're actually stayed.
11 It's the ABN AMRO case, which is Docket No., the Bankruptcy
12 Court Docket No. is 10-05354; that's also known as the RBS
13 case. The second case at the District Court is Picard v.
14 ABN AMRO Bank Ireland, Ltd., which is Adversary Proceeding
15 No. 10-05355.

16 In those two cases that are at the District Court,
17 Judge Bernstein also ruled that the Trustee did not
18 sufficiently plead the defendants' willful blindness. Those
19 cases resulted in a final judgment that was appealed to the
20 District Court. The defendants in those actions did try to
21 join the Second Circuit appeals in the Legacy and Citibank
22 matters, and the Second Circuit did not allow them to join
23 as parties; it allowed those defendants to file amicus
24 briefs in the Second Circuit appeal.

25 So the posture of those cases is that the District

1 Court, they are pending in the District Court but they are
2 stayed pending the outcome of the Second Circuit appeal.

3 THE COURT: Okay.

4 MS. BROWN: With the exception of those three
5 cases that are listed on Exhibit C to the report, every -- I
6 believe, and perhaps one of my colleagues, Oren Warshavsky
7 or Torello Calvani when they speak later, could correct me
8 if I'm wrong. But I believe with the exception of those
9 three, every single one of the other cases listed on Exhibit
10 C is pending before Your Honor in the Bankruptcy Court.

11 THE COURT: Okay.

12 MS. BROWN: So I think it would, you know,
13 hopefully, it would be helpful --

14 THE COURT: I have one question. I just have one
15 question to ask. The District Court, ABN AMBRO NV and ABN
16 AMBRO Bank of Ireland, 05354 and 05355, you also have on 12-
17 01697 ABN AMBRO Fund Services, Isle of Man. Is that in the
18 same category?

19 MS. BROWN: I don't believe so, Your Honor. I
20 believe that's a separate --

21 THE COURT: Okay, that's all I needed to know.
22 Thank you.

23 MS. BROWN: Of course. So with Your Honor's
24 indulgence, I'd like to maybe spend just a couple of minutes
25 talking about the history of the good-faith appeal because

1 it's long, and I promise to be very brief, but I think it
2 helps explain why we're still at the pleadings stage in many
3 of the cases that are currently pending before Your Honor.

4 So in 2010 when the Trustee brought his
5 Complaints, both the good-faith cases and the bad-faith
6 cases, it was the standard for good faith under 548(c) and
7 550(b) was inquiry notice, and it was the defendants' burden
8 to plead their affirmative defense.

9 Judge Lifland denied several motions between 2009
10 and 2011 by various defendants who sought to dismiss the
11 Trustee's Complaint because he found that the Trustee had no
12 burden to negate a defense in his Complaint.

13 In 2011, in the Picard v. Katz matter, that was
14 one of the first matters that Judge Rakoff withdrew the
15 reference on, and he began issuing various decisions in that
16 matter. Following that event, hundreds of defendants began
17 withdrawing the reference to Judge Rakoff, and he granted
18 those motions and withdrew on a number of common issues that
19 we've listed in the status report, and he directed the
20 parties to undertake common briefing.

21 The two issues that are most relevant to the
22 umbrella of bad-faith cases were the extraterritoriality
23 decision, as well as the decision on 548(c) and 550(b)'s
24 good-faith defense.

25 So Judge Rakoff issued his decisions in 2014 on

1 both of the ET and the good-faith issues. And in the good
2 faith, with regard to good faith, he held that it's no
3 longer inquiry notice, but a willful blindness standard to
4 show a lack of good faith, and that's no longer the
5 defendants' burden to plead that but the Trustee's.

6 So because this was a new standard being imposed
7 upon the Trustee, we immediately sought an interlocutory
8 appeal from Judge Rakoff, which he denied in 2014, and he
9 held that the Circuit should only review that ruling after
10 the Bankruptcy Court has applied it to the facts of a
11 particular case.

12 Two months after his good-faith ruling, Judge
13 Rakoff issued his extraterritoriality ruling, and he found
14 that because Section 550(b) does not apply
15 extraterritorially, the Trustee must plead facts to
16 establish that the subsequent transfers were domestic. So a
17 number of the subsequent transferee defendants, I mean, as
18 well as we're, you know, around the world, so that ruling
19 did have an impact on the Trustee's cases.

20 So the cases were then returned to Judge
21 Bernstein. And because of the new pleading standards that
22 were imposed, in the Summer of 2014 following Judge Rakoff's
23 ruling, the Trustee moved before Judge Bernstein for leave
24 to amend his Complaints to plead additional allegations with
25 regard to extraterritoriality, as well as good faith, and

1 the Trustee also sought leave to take additional discovery
2 so that he could meet this new pleading standard of willful
3 blindness.

4 And Judge Bernstein then ruled that he wanted to
5 address the extraterritoriality issues first before he
6 addressed any issues with regard to the good-faith defense
7 or any discovery requests. And so, the parties then
8 embarked on, I guess almost a six-year process to litigate
9 the extraterritoriality ruling.

10 Judge Bernstein came down with his ruling in 2016,
11 so that's two years after Judge Rakoff's ruling. The
12 Trustee appealed that to the Second Circuit, which reversed
13 in 2019, which reinstated the Trustee's claims against the
14 subsequent transferee defendants, and in June 2020, the
15 Supreme Court denied cert, so that's the ET ruling.

16 We had cases and claims and defendants that were
17 not dismissed by Judge Bernstein's extraterritoriality
18 ruling. And as soon as we got Judge Bernstein's ruling on
19 ET, while the ET appeal was pending, the Trustee moved
20 before Judge Bernstein to take -- he renewed his motion for
21 the limited discovery on the good-faith issues because under
22 the way Judge Bernstein had segregated the cases, those
23 issues were now ripe for disposition.

24 So in the cases that weren't dismissed by
25 extraterritoriality, we sought additional discovery, which

1 Judge Bernstein denied in 2018. So at that point, the
2 Trustee, you know, moved forward with his cases based on the
3 record that he had, and he brought forth various cases where
4 he believed that the pleadings were sufficient to meet the
5 willful blindness standard without the benefit of any
6 additional discovery.

7 One of those cases was the Citibank matter. The
8 Trustee brought a motion for leave to amend, which Judge
9 Bernstein denied. He found that the Trustee did not plead
10 the defendants' willful blinding, and that was the first
11 case that resulted in a final judgment that encapsulated the
12 standard on good faith, so that was really the first
13 opportunity in 2019 that we had to appeal that ruling of
14 Judge Rakoff.

15 Around the same time that the Citibank judgment
16 became final, there was a final judgment also entered in the
17 Legacy case. That case, likewise, Judge Bernstein ruled
18 that the Trustee did not plead the defendants' willful
19 blindness.

20 So we finally had two final judgments in hand five
21 years after Judge Rakoff's rulings. We asked for a direct
22 appeal to the Second Circuit which was granted. We finished
23 briefing and, as I mentioned, we had argument last Friday
24 before the Circuit on those appeals. So the appeal --

25 THE COURT: Let me interrupt. Excuse me, I just

1 need to interrupt for one thing. I'm again looking at
2 Exhibit C and I remember your narrative about Legacy. Am I
3 missing Legacy or I'm not finding it in your Exhibit C?

4 MS. BROWN: Legacy is listed on Exhibit B, Your
5 Honor.

6 THE COURT: Oh, it's B, I apologize. There, I see
7 it, okay. Thank you.

8 MS. BROWN: Of course.

9 THE COURT: Never mind, thank you. Okay, go
10 ahead.

11 MS. BROWN: So just turning to the appeal for a
12 second, there are -- so there's two appeals that present,
13 there's two common issues amongst the appeals in each of the
14 Citibank and Legacy cases, and then each case has an
15 individual issue.

16 The common issue is, of course, what's the proper
17 standard for good faith under 548(c) or 550(b): is it
18 inquiry notice, willful blindness, or I guess potentially
19 something else that the Circuit might impose, and the second
20 common issue is whose burden it is to plead that good-faith
21 defense.

22 In each appeal, there's a separate issue of
23 whether Judge Bernstein correctly applied the willful
24 blindness standard to the Trustee's allegations. And I
25 guess I would say it would be kind of foolish of me to try

1 to predict exactly what the Circuit would do. I certainly
2 have my views on what they should do. But even as an
3 advocate, I concede that there's a lot of different possible
4 outcomes.

5 And so, just to kind of walk Your Honor a couple
6 that pop out at me is I think if the Circuit were to rule on
7 the two common issues, it might not reach the individual
8 issues because it might not need to, and I think the
9 opposite is also true.

10 So it's really hard to predict exactly the path
11 that the remaining cases will take without that clear
12 guidance from the Second Circuit on the standard that
13 governs this defense that's present in every single one of
14 these cases.

15 I did take a look at the prior appeals that we've
16 had to the Second Circuit to get a sense of timing. And I
17 think based on our prior appeals with sort of similar issues
18 that affected a broad number of cases, I think we can expect
19 a ruling sometime in the next three to nine months. Our
20 extraterritoriality ruling was really the quickest ruling we
21 had, which was also the most recent. We've had other
22 appeals where the rulings took, you know, nine months to a
23 year.

24 But what I would say to Your Honor is that the
25 Trustee is very, very eager to litigate these cases and get

1 into discovery. We've been seeking discovery for almost
2 seven years to get these cases to a place where we can
3 prosecute our claims and recover the customer property
4 that's outstanding.

5 And so, assuming the Circuit rules in the
6 Trustee's favor on some or all of the issues, the Trustee
7 wants to get into discovery as quickly as possible. Some of
8 the events in the Complaint took place 15, 16, 17 years ago
9 at this point and so, I would assure you that we're going to
10 do everything that we can as soon as we have the Circuit's
11 ruling in hand to move these cases forward as quickly as we
12 can.

13 My colleagues, Oren Warshavsky and Torello Calvani
14 are also on the line. They can speak to some of the
15 specifics of either the feeder fund or the subsequent
16 transferee cases if Your Honor would like to hear more
17 details on those, or I can answer any questions that you
18 might have.

19 THE COURT: Okay. Let me just for -- time is not
20 really my issue, but I think timing is my thought. If we
21 are still waiting on the Circuit, I don't know that we need
22 any more information about the subsequent transferee cases.
23 Am I hearing what you said? Basically, that you're not
24 really looking for an opinion or thinking that you'll be
25 seeing an opinion until around October/November.

1 MS. BROWN: I think that's right, Your Honor, for
2 the subsequent transfer cases that are awaiting that
3 decision. There are some cases that are in active discovery
4 that maybe we should address today. But I think the
5 remaining subsequent transferee cases, they will be impacted
6 by the ruling, so I don't think it makes -- I don't think we
7 would be asking for anything from Your Honor until then.

8 THE COURT: Okay. The one thing I would like to
9 ask is, I remember reading in your summary that you sent me
10 that you all had doing some discovery by agreement; is that
11 in any of these cases?

12 MS. BROWN: Yes, and Mr. Warshavsky is available
13 to discuss those cases.

14 THE COURT: Okay, all right.

15 MS. BROWN: Thank you, Your Honor.

16 THE COURT: As you can just understand, I'm trying
17 to get a full picture of everything that's going on. Okay,
18 Mr. Warshavsky.

19 MR. WARSHAVSKY: Good morning, Your Honor.

20 THE COURT: Good morning.

21 MR. WARSHAVSKY: Thank you. I think if we go to
22 Exhibit B maybe, that would be the place to start. One of
23 the challenges, of course, is that you already had a very
24 long discussion. I think it was very thorough, so I think
25 maybe it's best to explain maybe one or two of the actions.

1 There are two here which are in discovery, and that is the
2 fourth one down, Your Honor, 10-4285, UBS AG et al, and the
3 third one down, I'm sorry, which is 09-01364, which is HSBC
4 Bank et al.

5 And in the HSBC action, there is still an initial
6 transferee, Alpha Prime, and the Trustee is in Alpha Prime,
7 are in active litigation and there is active discovery, and
8 that is proceeding, and Judge Maas is the discovery
9 arbitrator there.

10 THE COURT: Okay.

11 MR. WARSHAVSKY: The parties, a lot of the
12 discovery is overseas. Right now, the Trustee is taking
13 active discovery -- well, trying to take active discovery.
14 Given the challenges of the Hague request, number one, and
15 obviously the pandemic, number two, so timing has been a bit
16 of a challenge, but we are taking discovery in Luxembourg,
17 Austria, and England in that case right now.

18 THE COURT: And I think I recall that Judge
19 Bernstein had allowed for the Hague service; is that in this
20 case?

21 MR. WARSHAVSKY: That's going to be in the next
22 case I discuss.

23 THE COURT: Okay.

24 MR. WARSHAVSKY: That'll be in the one right below
25 it, UBS. So in the HSBC case, there had been various

1 motions for letters of request under the Hague Convention,
2 and some of those have been disputed or negotiated, so he
3 did have to issue orders in some of those.

4 Generally speaking, we have tried to work it out
5 with other parties ahead of time so as not to have a
6 discovery dispute on these requests, but they tend to have a
7 lot of detail and they tend to have some conflict of laws
8 issues, so we do the best we can. All the parties try to do
9 the best they can and take it to the judge only when they
10 really can't reach an agreement.

11 Turning to the UBS case, the second one, there's
12 two cases which UBS is the first party; that's just because
13 of the Convention of how UBS happened to be a custodian for
14 those funds. But I'd focus on the first one, the one I
15 called out before, 4285, we would call that the LuxAlpha
16 case. LuxAlpha and Groupement Financier -- I hope I
17 pronounced that right -- are the two initial transferees.

18 And when the Trustee brought the claim, the
19 Trustee brought the claim both against the funds themselves,
20 as well as the service providers of those funds, which were
21 the UBS entities and in LuxAlpha, it was also a group of
22 entities called Access.

23 I think Miss Brown talked a little bit about the
24 effect of the appeals. In this case in particular, this was
25 a foreign feeder fund, it's a foreign feeder fund in

1 liquidation, LuxAlpha is. And when the cases were returned
2 in 2014, LuxAlpha was one of the cases that was part of the
3 omnibus extraterritoriality proceedings and the subsequent
4 transferees were dismissed from -- or most of them were
5 dismissed from the case in the Bankruptcy Court's
6 extraterritoriality ruling.

7 In the meantime, while the extraterritoriality
8 briefing was occurring, I think what you're referring to is
9 the parties -- the Trustee tried to start discovery and the
10 parties ultimately -- he ultimately -- the parties couldn't
11 agree. And Judge Bernstein ruled that the Trustee could
12 take discovery under the Hague Convention against the
13 parties, almost as if they were a third party, not do
14 federal rules discovery, and I think maybe that's what Your
15 Honor is referring to.

16 THE COURT: That is exactly. I am because I
17 remember it being said, it's under the Hague rules, not
18 under the civil procedure rules. Okay.

19 MR. WARSHAVSKY: That's right. And so, the
20 parties had that agreement, and some discovery has been
21 served, and I think maybe in 2017 or 2018 -- I don't have
22 that date, Your Honor, when it was actually served -- and
23 then discovery, the production began in 2020 in response to
24 that out of Luxembourg.

25 At the same time, the Trustee tried -- in one of

1 the initial transferees, LuxAlpha, entered into mediation.
2 We did it with Judge Conrad, former Judge Conrad, who was a
3 bankruptcy judge in Vermont; ultimately, the mediation was
4 unsuccessful. And so the Trustee amended his Complaint in
5 March, or made a motion to amend in March of 2020 before the
6 mandate had been returned as to the subsequent transferees.

7 So the Complaint was only against the initial
8 transferees, which were LuxAlpha and Groupement. And it was
9 in connection with that case and the Trustee's motion to
10 amend where Judge Bernstein indicated that he did not want
11 to further delve into the issue because any ruling -- if the
12 Second Circuit changed the standard in any respect, the
13 parties would be right back in front of him on a motion to
14 amend or a motion to dismiss.

15 And so, he adjourned that action sine die 'til
16 after the Second Circuit's decision. And as such, a few
17 months later, the Trustee and LuxAlpha at least agreed to
18 try to start discovery under the federal rules. Again, we
19 went to Judge Maas -- we appointed Judge Maas as the
20 discovery arbitrator, and he has issued one order in the
21 case and we're trying to take discovery in that case now to
22 the extent possible.

23 THE COURT: Okay. And on this one, since we've
24 got it sine die, we just want to make sure it never falls
25 off the radar.

1 MR. WARSHAVSKY: Right.

2 THE COURT: And I think all of us are in agreement
3 with that.

4 MR. WARSHAVSKY: We absolutely are, Your Honor.

5 THE COURT: Well, and since we see what's going
6 on, this is -- I probably will ask for another status. So,
7 of course, we'll be informed around October or November,
8 we'll take another look at that. Okay.

9 But going forward and any time you can reach
10 agreements, of course, that's wonderful, and I do have to
11 admit I really appreciate Judge Maas' work on this. If
12 you're around any judge, discovery disputes are often the
13 bane of our existence, so thank you.

14 MR. WARSHAVSKY: Your Honor, I think the only case
15 which is active, you know, there's the Avellino case, which
16 is more of a different -- it's not a feeder fund case; that
17 case is active and in expert discovery.

18 THE COURT: Okay.

19 MR. WARSHAVSKY: And then there's the Fairfield
20 case, which I know Your Honor has become well aware of, and
21 that case is proceeding on a motion to dismiss. There's the
22 assigned claims, which Your Honor already heard, and then
23 there's the claim against the subsequent transferors, and I
24 think, which is really the management --

25 THE COURT: Okay, hold on. Just stop for me for

1 just a minute, Mr. Warshavsky.

2 MR. WARSHAVSKY: Sure.

3 THE COURT: And the Fairfield case you're talking
4 about is the 09-01239, Fairfield Investment Fund?

5 MR. WARSHAVSKY: Correct, Your Honor.

6 THE COURT: Okay. So that's in, again, Exhibit B,
7 and the Avellino and the Fairfield and there's -- okay, all
8 right.

9 MR. WARSHAVSKY: I'm sorry, Your Honor.

10 THE COURT: I'm sorry to interrupt. I just want
11 to be clear.

12 MR. WARSHAVSKY: Yes, my apologies.

13 THE COURT: So I just want to be clear.

14 MR. WARSHAVSKY: I had it moved from the exhibit.
15 Yes, I was referring to the first Avellino, that's the first
16 captioned case on Exhibit B.

17 And then the Fairfield case, which is the second
18 captioned case where the Trustee settled with the fund, the
19 initial transferees, but the claims against some of the
20 management defendants continues. And that there is motion
21 practice, which briefing is currently before Your Honor and
22 I guess we're hopeful that the briefing will end and the
23 Second Circuit's decision will coincide.

24 And with that, I think --

25 THE COURT: I believe -- Mr. Warshavsky, just let

1 me -- if I'm recalling correctly, I think we have a hearing
2 on this in June.

3 MR. WARSHAVSKY: That's correct, Your Honor.

4 THE COURT: Okay, all right.

5 MR. WARSHAVSKY: And, Your Honor, as most of the
6 subsequent transfer cases do stem out of Fairfield, I think
7 maybe I will turn it over to Mr. Calvani just to discuss
8 them if you'd want to. The only comment I would make to the
9 colloquy you had with Miss Brown before, is the very last
10 action on Exhibit C, which is captioned 20-01316,
11 Montpelier, et al.

12 THE COURT: Uh huh.

13 MR. WARSHAVSKY: That is actually a subsequent
14 transfer case where briefing -- that is a subsequent
15 transfer case that comes out of Legacy and is all fictitious
16 profits. So at least the Trustee's position is that intent
17 or good faith or lack of good faith wouldn't matter, so that
18 is also currently being briefed. A motion to dismiss was
19 filed two weeks ago and the Trustee's response is due --
20 opposition is due on May 4th.

21 THE COURT: Okay. So that, you've alerted me to
22 something. Do you expect any more cases to be filed similar
23 to the Montpelier case?

24 MR. WARSHAVSKY: There might be one that I'm
25 aware, but Mr. Calvani might be -- is probably better to

1 supplement my answer to this, but there is a tolling
2 agreement from one other subsequent transferee out of Legacy
3 that the Trustee is trying to negotiate with, but that is
4 yet to be filed.

5 THE COURT: Okay.

6 MR. WARSHAVSKY: But I think Mr. Calvani can
7 answer these questions better than I can.

8 THE COURT: And Mr. Warshavsky, did we give you a
9 hearing date on your motion to dismiss?

10 MR. WARSHAVSKY: Your Honor, I apologize, I don't
11 know. I'm sorry?

12 THE COURT: I said I apologize. It was -- it's
13 not your motion to dismiss, it is someone else, but I don't
14 know if there's a hearing date. Okay.

15 MR. WARSHAVSKY: I know we have a stipulated
16 schedule, Your Honor.

17 THE COURT: Okay.

18 MR. WARSHAVSKY: And I don't know -- I believe
19 that it might have been filed before the cases were
20 transferred over. I believe the parties had stipulated to
21 June 16th, but I don't know if that was in consultation with
22 chambers. I'm sorry, I don't have that information in front
23 of me.

24 THE COURT: Okay, we'll take care of that. We
25 just need to be in touch with chambers, okay. All right.

1 And now that you all have the schedules, you don't -- we
2 have some omnibus dates. So everyone, you don't necessarily
3 have to totally consult chambers. I believe that one was
4 set for June 9th, but our omnibus is June 16th, but that's
5 also something I have to talk with chambers about with
6 staff, but it sounds like we're beginning to get on the same
7 page, everyone. Thank you.

8 MR. WARSHAVSKY: Thank you, Your Honor.

9 THE COURT: Now we're moving into -- you wanted to
10 move into the...

11 I have the Trustee's agenda, but the Trustee's
12 agenda has two other -- I believe there's two other matters.
13 First, let me ask a question before we move into something
14 else, because I just want to simply call for the record the
15 09-11893, which is the Bernie Madoff Chapter 7. And I'm
16 just calling it to make sure that I understand, first, who's
17 the Trustee in the Chapter 7 -- and correct me if I'm wrong
18 -- that there's no litigation. This is simply -- I don't
19 want to say a placeholder but is there anything that remains
20 outstanding and a timeline for moving forward with this.

21 MS. LONGO: Good morning, Your Honor. This is Kim
22 Longo of Windels Marx. I can speak to that if it's
23 acceptable. Windels Marx, Alan Nisselson was appointed the
24 Trustee in 2009 for the Bernie Madoff individual case. That
25 case was substantively consolidated with the main BLMIS case

1 in June 2009, and there's been no activity in that case
2 since that time.

3 THE COURT: So all we need to do is just make sure
4 on this that it just doesn't fall off, that we have it -- I
5 guess are you saying to me, Ms. Longo, we don't really need
6 to call it again?

7 MS. LONGO: Yes, Your Honor, it's generally not
8 involved. Occasionally, something's entered on the docket
9 that relates to the main case, but there's, you know,
10 nothing happening in that case and the case doesn't
11 currently, you know, engage in anything involved with the
12 BLMIS Trustee.

13 THE COURT: Okay. So this one, okay, so we're
14 only going to be dealing with this if we end up at almost
15 the end of the case, but Mr. Nisselson is the Trustee and
16 you are representing him. Okay, thank you.

17 MS. LONGO: Yes, Your Honor. We also represent,
18 just for clarity, Irving Picard as the Trustee on BLMIS as
19 special counsel and conflicts counsel, but that's separate
20 and independent from our representation of Alan Nisselson
21 and that is sitting inactive, for lack of a better way to
22 say it.

23 THE COURT: Okay, thank you. That's what I -- and
24 before we turn to the Fairfield Sentry, let's sort of clean
25 up the docket on the administration of -- I have two things

1 on my docket. I have --

2 MR. CREMONA: Good morning again.

3 THE COURT: Yes, please, what else do I have on
4 the SIPA? Oh, the mediations, thank you. Go ahead, okay.

5 MR. CREMONA: Sorry to interrupt, Your Honor. I
6 was just trying to help keep us moving forward on the
7 agenda. Again, this is Nicholas Cremona on behalf of Baker
8 Hostetler and the Trustee.

9 We have two remaining items, as Your Honor noted.
10 Next on the agenda this morning is the status conference on
11 the mediations with the Chaitman LLP firm. And just to give
12 Your Honor some background, the parties first appeared
13 before the Court in May of last year to request assistance
14 in resolving over 60 adversary proceedings remaining where
15 Chaitman LLP served as counsel of record by way of
16 mediation.

17 So at that time, the parties reach agreement on
18 protocols to conduct mediations in those 60 or so remaining
19 cases, consistent with the litigation procedures order. The
20 parties agreed to prioritize the cases and proceed to
21 mediation before former Judge Hurkin-Torres to the extent
22 that his schedule permitted. Judge Bernstein so ordered the
23 May 28 hearing transcript to reflect the agreed-upon
24 protocols and procedures and the parties began mediating
25 those cases in June of 2020.

1 You know, as we sit here today, overall, this
2 process has been very successful. For the most part, the
3 parties have been able to adhere to their commitment to
4 mediate the cases on a weekly basis. Since the beginning of
5 the process, the parties have consensually resolved over 30
6 -- actually, 33 adversary proceedings exactly.

7 And in addition, we've reached agreement and have
8 settlements in principle in two other adversary proceedings.
9 As we detailed in the status report, one as recent as last
10 Thursday, which is the Sylvan case, and that's Adversary
11 Proceeding No. 10-04961. We have ongoing mediations in 11
12 additional cases and have commitment among the parties to
13 have follow-up sessions in two cases tomorrow, namely the
14 Peter Kamenstein case, which is Adversary Proceeding No. 10-
15 04648, and the Keller cases, which is Adversary Proceeding
16 No. 10-04539.

17 The parties have also reached agreement to mediate
18 the following four cases over the next four Thursdays on
19 March 25, April 1, April 8, and April 15th, respectively,
20 subject to assigning the particular dates based on the
21 defendants'' schedules. The four cases I'm referring to are
22 as follows: the Fern Palmer, Adversary Proceeding No. 10-
23 04397; Boyer Palmer, 10-04826; the Estate of Jerome Goodman,
24 10-04545; and as we discussed earlier, the RAR Entertainment
25 Fund, which is 10-04352.

1 And unless Your Honor has any questions, I would
2 ask that Miss Chaitman confirm the defendants' agreement to
3 the schedule of prospective mediations as I've stated.

4 THE COURT: Yes, please Ms. Chaitman.

5 MS. CHAITMAN: Thank you, Your Honor. Yes, we've
6 agreed to schedule the four mediations. I'm just now
7 confirming the availability of clients, so I haven't
8 finalized which dates each will appear, but I'll give the
9 Trustee that information within the next 24 hours.

10 THE COURT: Excellent. Sounds like this is moving
11 forward. I probably will need another -- what is the best
12 way to be updated on these?

13 MR. CREMONA: With that, Your Honor, I would
14 suggest, as we have in the past, that this matter be carried
15 to the next omnibus hearing date, which I believe is April
16 21, so the parties can report back at that point any
17 progress and any issues that should arise if that's
18 acceptable to the Court.

19 THE COURT: Certainly, because given what I've
20 just heard from you all, it seems to me that that will just
21 be a quick note on the calendar, but I do like to be
22 apprised of what's happening, so I appreciate that. And I
23 know that seems a little soon, but it seems to me as I hear
24 what you all have to say, you all are working well together
25 and making this happen. Thank you.

1 MR. CREMONA: Thank you, Your Honor. Then the
2 final item on the Trustee's agenda, unless there are any
3 questions, I would move forward to that.

4 THE COURT: Okay, please do. I have no more.

5 MR. CREMONA: Sorry, Your Honor. The final item
6 on the Trustee's agenda then is the Trustee's request for
7 leave of Court to file summary judgments in two identical
8 good-faith actions, except for the fact that they have
9 different amounts of fictitious profits at issue. One is --
10 the first is Picard v. Norma Shapiro, which is Adversary 10-
11 04486, which has \$926,064 in fictitious profits at issue;
12 and the other is Adversary Proceeding No. 10-04921, Picard
13 v. Stanley Miller, and that case has \$669,793 in fictitious
14 profits at issue.

15 Your Honor, as the Trustee noted in his request,
16 which was the same in both cases because they are in the
17 identical procedural posture and are similarly situated in
18 all respects, both cases have completed discovery many years
19 ago and have been through mediation and negotiations that
20 span several years.

21 Unfortunately, the parties weren't able to
22 consensually resolve the cases and the mediator issued final
23 reports concluding the mediations on February 8th earlier
24 this year, so that the cases could proceed before Your Honor
25 in accordance with the litigation procedures order.

1 During the course of the cases, the Trustee served
2 expert reports and allocutions establishing his prima facie
3 case. The defendants in both cases conducted no discovery
4 and provided no rebuttal experts. In the meantime, the law
5 of the case has become even more clear, if possible, that
6 fictitious profits received through this Ponzi scheme must
7 be returned, and now as Your Honor has awarded, with
8 interest.

9 So based on Your Honor's recent decision as I
10 mentioned earlier in the Epstein case, which I know you're
11 intimately familiar, we believe that these remaining cases
12 are amenable to disposition on summary judgment because Your
13 Honor noted, among other things, that all of the legal
14 arguments and defenses were previously decided and are law
15 of the case and awarded judgment in favor of the Trustee,
16 plus prejudgment interest in the rate of 4 percent from the
17 date of the Complaint to the date of the judgment.

18 So on this basis, the Trustee submits that summary
19 judgment is appropriate because there are no issues of
20 material fact precluding Your Honor from entering judgment
21 finding that BLMIS made the transfers to the defendants in
22 these actions with the actual intent -- actual fraudulent
23 intent in the course of and in furtherance of the Ponzi
24 scheme.

25 Accordingly, the Trustee seeks leave here to date

1 to file motions in both cases, and provided its acceptable
2 to the Court, we are prepared to present a schedule to do so
3 that would be consistent with what we have done in prior
4 motions before Your Honor in the Epstein case and the
5 Palmedo case.

6 THE COURT: Very good. And I believe, is it Ms.
7 Neville that's on the other side of these cases; who's your
8 opposing counsel?

9 MS. NEVILLE: Good morning, Your Honor. It's
10 Carole Neville from Dentons.

11 THE COURT: Yes, Ms. Neville, hi. I thought so,
12 all right.

13 MS. NEVILLE: Yes, I'm here.

14 THE COURT: State your name for the record.

15 MS. NEVILLE: Carole Neville from Dentons US, LLP,
16 and I'm here with Art Ruegger.

17 THE COURT: Thank you.

18 MS. NEVILLE: We represent both Stanley Miller and
19 Norma Shapiro, and we've opposed the Trustee's proposed
20 proceeding on practical grounds and basically, humane
21 grounds. Both of these cases are good-faith cases. Both
22 involve very elderly defendants.

23 Mr. Miller is 89 and in poor health. He doesn't
24 have assets to litigate with the Trustee or to satisfy the
25 judgment. He has a wife who's nine years younger, and all

1 of the property that he holds is exempt from the execution
2 under Florida law; it's held either by tenants-in-the
3 entirety, protected by the homestead laws, or also protected
4 by laws governing proceeds of individual retirement
5 accounts.

6 So proceeding to summary judgment to obtain a
7 judgment, which has no chance of execution, makes no sense
8 to me and seems quite heartless. I have in a culpa letter
9 that I sent to Your Honor laid out the law in this
10 jurisdiction, which says that if the property transferred
11 came from an exempt asset, which the individual retirement
12 account is, there is no cause of fraudulent transfer, and
13 so, there's a legal issue here that has not been addressed
14 by Your Honor in any other case.

15 But unfortunately, this defendant has no assets to
16 pursue litigation with. He and his wife had maybe a million
17 dollars in total in cash for the rest of their lives and
18 can't satisfy this judgment and litigate and conduct the
19 rest of their lives, so that's the Millers.

20 I think that those cases, twice Mr. Miller sent
21 hardship applications and twice they were denied. I think
22 this case should be dismissed on hardship grounds.

23 THE COURT: Let's not go to Miss Shapiro until we
24 discuss Miller.

25 MS. NEVILLE: Okay.

1 THE COURT: Mr. Cremona.

2 MR. CREMONA: Yes, Your Honor, thank you. Your
3 Honor, I think it's important to say that none of what we
4 just heard from Miss Neville articulates a viable defense to
5 an avoidance action. She has raised purported issues in
6 connection with the Trustee's ability to collect on his
7 eventual judgment in these cases, and I think she's all but
8 conceded the liability based on the law of the case.

9 But just quickly, I'd like to respond to one issue
10 she raised on the IRA, claiming that it has not been
11 litigated with regard to the Miller defendants, and that's
12 the IRA issue as defined in the letter; that's just not
13 correct. That issue was decided twice previously in these
14 cases: first, it was decided by the District Court in the
15 Picard v. Greiff matter, which is at 476 B.R. 715 at p. 729;
16 that case is cited in our status report.

17 And the District Court made clear that the
18 Internal Revenue Code does not require a dismissal of these
19 actions based on withdrawals from an IRA account. And the
20 Court also rejected the claim that an IRA account is exempt
21 by state law of the trust, as Miss Neville I think
22 articulated in her letter.

23 And again, this Court in its omnibus decision at
24 531 B.R. 439 rejected -- and by the way, the Miller
25 defendants participated in the briefings on the omnibus

1 good-faith motion to dismiss, which was covered by the
2 decision that I just quoted, raising the exact same argument
3 in his motion to dismiss the amended complaint, as filed in
4 his motion to dismiss on March 22nd, 2013, which is ECF No.
5 25. So I think just as a legal matter, the issue has been
6 heard and rejected.

7 And on the issue that it's an issue of compassion
8 or that the case should be dismissed based on a hardship.
9 You know, unfortunately for these defendants, Miss Neville's
10 judgment cannot supplant that of Mr. Picard as the Court-
11 appointed SIPA Trustee charged with recovering customer
12 property that is wrongfully being withheld by these
13 defendants for over 10 years.

14 And while the defendants in both cases are of
15 advanced age at this point in time, they could have resolved
16 these cases consensually years ago, and we've been involved
17 in mediation for multiple years, but instead they chose to
18 vigorously litigate these cases in the face of clear
19 precedent, which is binding.

20 So the Trustee must prosecute these actions to
21 conclusion in discharge of his fiduciary duty. Outright
22 dismissal, as the defendants suggest, would be in derogation
23 of the Trustee's duty, providing an unjust outcome by
24 providing disparate treatment to similarly situated
25 creditors, as Ms. Neville is urging. He cannot, just based

1 on her urging, provide better or different treatment to
2 these defendants who are withholding stolen funds.

3 And accordingly, the Trustee that to expeditiously
4 resolve these cases, we should be permitted to move forward
5 by way of summary judgment, which we believe is the most
6 efficient and expeditious way to conclude the cases,
7 especially in consideration of Your Honor's decision in
8 Epstein and to return the stolen money to the -- the stolen
9 customer property to the net loser victims.

10 MS. NEVILLE: Your Honor, may I?

11 THE COURT: Ms. Neville, you had your hand up.
12 Yes, of course, you may rebut certainly.

13 MS. NEVILLE: Well, first of all, the two
14 decisions cited by Mr. Cremona on the motion -- on our
15 motions to dismiss and the issue of whether or not proceeds
16 of an IRA under Florida law or under New York law can be
17 subject to execution or fraudulent transfer law is still, in
18 my book, not finally resolved.

19 Second of all --

20 THE COURT: But that's past -- but Miss Neville,
21 that's past summary judgment and getting a decision; that's
22 on collection. Tell me why we should move --

23 MS. NEVILLE: Not entirely, Your Honor.

24 THE COURT: Yes, it is. This is very sad, and it
25 is absolutely heartbreaking, and we understand that, but...

1 MS. NEVILLE: Your Honor, in this case, all of the
2 property is exempt under Florida law.

3 THE COURT: Once we get through summary judgment
4 and anything like that, that is collection; that is not part
5 of getting -- we got it, you got to get to that stage first.

6 MS. NEVILLE: He has no assets to pursue summary
7 judgment and he has no assets to fight collection. So right
8 now, we know that the assets are protected by tenants-in-the
9 entirety and the homestead act, so why are we holding a
10 judgment over this man's head; that's the question, Your
11 Honor.

12 THE COURT: Miss Neville, I hear you. I'm ruling
13 against you. I'm going to permit the Trustee to move
14 forward with summary judgment. If the defendant is judgment
15 proof, then the Trustee will have no ability to collect.
16 Now then, let's move on.

17 MS. NEVILLE: And he will hold the judgment over
18 an 89-year-old man and his wife; that's really -- that's the
19 outcome there.

20 THE COURT: Thank you, Miss Neville.

21 MS. NEVILLE: The second one, Your Honor, is Mrs.
22 Shapiro is 102. She has one asset left, which is some funds
23 which would just cover the judgment now. She's willing to
24 let the Trustee have a judgment which he can collect when
25 she dies, but she wants to keep her money until she dies to

1 maintain her independence and security. She's in fairly
2 good health. She doesn't intend to go traveling anywhere,
3 she can't because of the pandemic and because of her age.

4 This is just a matter of how you settle. And,
5 frankly, to take the money from this woman now is heartless.
6 This is all she has, and it is her independence. Now, the
7 Trustee can talk about his fiduciary duty. He can have a
8 judgment; it's just a question of when he gets to execute on
9 it.

10 THE COURT: Very good. Mr. Cremona.

11 MR. CREMONA: Your Honor, again, I think similar
12 to the Miller action, we have not heard a defense to an
13 avoidance action and, instead, have heard, you know, an
14 emotional ploy, and I did not want to get into the
15 confidential settlement discussions and/or mediation and
16 what assets or available or not.

17 You know, as I've explained to Ms. Neville in the
18 context of the mediation, the Trustee certainly views all of
19 these persons as victims and acknowledge that we are in a
20 most unfortunate circumstance, but there are different
21 levels of victims, and there are net winners and there are
22 net losers that have not recovered their principal.

23 And the fact remains that Ms. Shapiro has retained
24 almost a million dollars in stolen funds for over 10 years.
25 And again, I realize she's of advanced age now, but she

1 could have settled this case years ago. We engaged in
2 mediation for over three years, and we were unable to
3 resolve the case.

4 The Trustee has determined that we should move
5 forward for summary judgment. As I mentioned, I'm prepared
6 to propose schedules to resolve both on a timely schedule
7 consistent with the matters and the way we've treated others
8 in the same cases.

9 THE COURT: Ms. Neville.

10 MS. NEVILLE: Your Honor, if she has to go forward
11 with a summary judgment motion, she's actually spending the
12 money that the Trustee could have if he would just let her
13 keep the money until she dies.

14 THE COURT: You're asking me, again, there's
15 something else that you've said that I agree with Mr.
16 Cremona. You all have had settlement discussions. You have
17 even talked to me about settlement discussions. That is not
18 in front of me. This is a legal matter in front of me.

19 MS. NEVILLE: Yes, Your Honor.

20 THE COURT: So Mr. Cremona, I am going to give you
21 permission to move forward with summary judgment. I don't
22 know about your scheduling, but why don't we set the summary
23 judgment hearing for June 16th.

24 MS. NEVILLE: Your Honor --

25 THE COURT: That way, you two can work -- yes,

1 ma'am?

2 MS. NEVILLE: I would like permission to move,
3 cross-move for summary judgment in the Miller case.

4 THE COURT: Of course.

5 MR. CREMONA: And, Your Honor, just that is
6 contemplated in the schedule that I had sort of mapped out,
7 consistent with, as I said, in what we did in Epstein and
8 Palmedo and the matters that are before the District Court.

9 If it's helpful, I mean, we can reduce it to a
10 scheduling order, but I had the matters in both cases
11 staggered and fully briefed by June 9, which would work well
12 with an argument on June 16 as Your Honor suggested.

13 THE COURT: That's perfect, thank you. So we'll
14 adjourn both. Mr. Cremona, given the circumstances in both
15 of these cases, if you have -- if it's a good-faith case and
16 discovery is completed and mediation is without success and
17 you have these similar fact patterns, I give you permission
18 to bring summary judgments in any cases that fit like this.

19 MR. CREMONA: Thank you, Your Honor.

20 THE COURT: That will avoid having a court
21 hearing.

22 MR. CREMONA: Thank you, Your Honor.

23 THE COURT: And honestly save the defendants some
24 money on having to have someone appear in court.

25 MR. CREMONA: As Your Honor may have noted, we had

1 contemplated that approach in the status report, so I
2 appreciate that we've confirmed that now on the record.

3 THE COURT: Thank you. Very good, thank you. And
4 thank you, Ms. Neville. Mr. Cremona is correct, there is a
5 general understanding of the elderly and it is hard for all
6 of us. And all I'm doing is I didn't mean to adjourn the
7 cases; I just meant the letter for permission for summary
8 judgment, we'll just do away with that. Very good. Okay,
9 thank you, everyone.

10 Now then, I believe Mr. Cremona, did we address
11 everything in your agenda and all the matters with Mr.
12 Picard and the BLMIS and the Bernie Madoff cases?

13 MR. CREMONA: Yes, we have, Your Honor.

14 THE COURT: Very good.

15 (Whereupon these proceedings were concluded at
16 11:16 AM)

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.

A handwritten signature in cursive script that reads "Sonya M. Ledanski Hyde". The signature is written in dark ink and is positioned above the printed name.

Sonya Ledanski Hyde

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Date: March 19, 2021